

## ESSAYS

### THE UNIVERSITY OF PENNSYLVANIA LAW REVIEW: 150 YEARS OF HISTORY

EDWIN J. GREENLEE<sup>†</sup>

The *University of Pennsylvania Law Review*<sup>1</sup> is one of the nation's oldest law reviews and the oldest continuously published legal periodical in the United States.<sup>2</sup> The predecessor publication of the *Law Review*, the *American Law Register*, was published by members of the Philadelphia Bar beginning in 1852.<sup>3</sup> As the *Penn Law Review* marks its 150th anniversary, this Essay reviews its history and details a few of the many significant signposts of the previous 150 years. In addition, this Essay looks at a few representative articles published in the *Law Review* and some of the personalities who made the *University of Pennsylvania Law Review* the significant publication that it is today.

The birth of the *Penn Law Review* proper—that is, as a student-edited legal publication closely affiliated with a major law school—was the result of reforms in legal education in the late-nineteenth and early-twentieth centuries. The *Penn Law Review* shares a common history with a number of other law reviews that were established during the same time period, such as those at Harvard, Columbia, and Yale law schools.<sup>4</sup>

---

<sup>†</sup> M.S., J.D., Ph.D., Acting Co-Director/Associate Director for Public Services, Bidle Law Library, University of Pennsylvania Law School. I would like to express my thanks to Paul Bond and Lindsay Goldman for their editorial assistance and to Laura T. Spadanuta and Micah Toomey for their research assistance.

<sup>1</sup> This publication will be referred to as the "*Penn Law Review*" or the "*Law Review*" throughout this piece.

<sup>2</sup> Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 32, 35 (1996). For an acknowledgement of the historical priority of the *University of Pennsylvania Law Review*, see Barbara H. Cane, Comment, *The Role of the Law Review in Legal Education*, 31 J. LEGAL EDUC. 215, 215 (1981).

<sup>3</sup> Joseph P. Flanagan, Jr., *Volume 100*, 100 U. PA. L. REV. 69, 69 (1951).

<sup>4</sup> See Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 778-91 (1985) (describing the parallel development and common features of the first student-edited law reviews).

The *Law Review* has faced many of the same challenges that have been presented to legal education and the legal profession itself. From its inception until today, the *Law Review* has had to strike a balance between the pragmatic orientation that legal practitioners require and the more academic, scholarly approach that first developed in legal publishing during the advent of the twentieth century.<sup>5</sup> The *Law Review* has had to find ways to finance and staff a sizeable publication even during periods of great fluctuation in the University of Pennsylvania Law School's student population, such as those occasioned by the First and Second World Wars. The *Law Review*, no less than the Law School,<sup>6</sup> has had to work to foster racial, ethnic, and gender equity and access to opportunity. Surmounting these challenges, the *Law Review* has offered, and continues to offer, a venue for legal scholars to articulate, develop, and refine their contributions to legal discourse.

Over the past 150 years, the ideologies and bases of legal scholarship have changed dramatically, as has the identity of legal scholars. Legal realism, progressivism, and, more recently, multidisciplinary approaches such as law and economics have become new centers of interest.<sup>7</sup> Voices from and for the margin have developed critical legal studies, critical race theory, and feminist theory, as well as varieties of postmodernism that owe their impetus to continental scholars such as Michel Foucault, Jacques Derrida, and Jürgen Habermas.<sup>8</sup>

All of these approaches to legal scholarship have been represented by leading articles in the *Penn Law Review*. Additionally, articles in the *Law Review* have captured seminal historical, social, and legal moments in nineteenth- and twentieth-century American history, such as the passage of the Nineteenth Amendment, which extended suffrage to women;<sup>9</sup> the lawlessness of the First and Second World

---

<sup>5</sup> See *id.* at 790 (explaining that the first student-edited law reviews were designed "to facilitate academic scholarship").

<sup>6</sup> The University of Pennsylvania Law School will be referred to as the "Law School" or "Penn Law" throughout this Essay.

<sup>7</sup> For an examination of changing interests in legal scholarship from the mid-nineteenth to the mid-twentieth century, see generally MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW 1870-1960*, at 3-7 (1992).

<sup>8</sup> For a discussion of historical trends in law review literature, and a suggestion that law reviews recuse themselves from nondoctrinal scholarship, see generally Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 *STAN. L. REV.* 1131, 1133 (1995).

<sup>9</sup> See, e.g., William J. Marbury, *The Proposed Woman Suffrage Amendment and the Amending Power*, 65 *U. PA. L. REV.* 403, 404 (1917) (questioning whether the Nineteenth Amendment would be void because of limitations on the amending power);

Wars and our attempts to restore lawful administration afterward;<sup>10</sup> the rise of the security state during the Cold War;<sup>11</sup> the struggle for civil rights;<sup>12</sup> and the protests against the conflict in the Vietnam.<sup>13</sup> Other historical moments captured in the history of the *Law Review* include the burst of technology in the late-twentieth century, including the development of computer technology and the Internet.<sup>14</sup>

The contents of the *Law Review* have included lead articles, case comments, notes authored by the *Law Review*'s staff, book reviews, and asides.<sup>15</sup> Special issues of the *Law Review* have honored important fig-

Recent Case, *Jury Service—Eligibility of Women*, 69 U. PA. L. REV. 386 (1921) (discussing whether granting suffrage to women would qualify them for jury service).

<sup>10</sup> See, e.g., Randolph Greenfield Adams, *Growth of Belligerent Rights over Neutral Trade*, 68 U. PA. L. REV. 20, 21-22 (1919) (discussing the conflict between the right of neutral states, during a period of war, to continue commerce with all belligerent parties and the right of belligerent parties to prevent neutral parties from supplying to an enemy state goods that could be used for military purposes); Note, *The Legal Limits of Personal Liberties in Times of War*, 90 U. PA. L. REV. 598, 598 (1942) (noting that during the prosecution of war, the federal government may take "repressive measures which would be deemed dictatorial in times of peace," and inquiring into "the Constitutional authority upon which [such measures] may be invoked" and "their effect upon the liberties guaranteed by the Bill of Rights").

<sup>11</sup> See, e.g., Louis Henkin, *The Right to Know and the Duty to Withhold: The Case of the Pentagon Papers*, 120 U. PA. L. REV. 271, 275 (1971) (describing governmental secrecy as "at best a necessary evil"); Shirley M. Hufstедler, *Invisible Searches for Intangible Things: Regulation of Government Information Gathering*, 127 U. PA. L. REV. 1483, 1516-23 (1979) (observing a need to strike a balance between the public interest in maintaining a secure state and the societal interest in preserving individual privacy).

<sup>12</sup> For example, *Penn Law Review* published two defenses of *Shelley v. Kraemer*, 334 U.S. 1 (1948), which declared court enforcement of racially restrictive covenants to be state action violative of the Fourteenth Amendment's Due Process Clause, against vociferous attacks. Louis Henkin, *Shelley v. Kraemer: Notes for a Revised Opinion*, 110 U. PA. L. REV. 473, 500-05 (1962); Louis H. Pollak, *Racial Discrimination and Judicial Integrity: A Reply to Professor Wechsler*, 108 U. PA. L. REV. 1, 6-18 (1959).

<sup>13</sup> See, e.g., Raoul Berger, *War-Making by the President*, 121 U. PA. L. REV. 29, 45 (1972) (questioning whether the Javits Bill was an unconstitutional delegation of authority to the President to use the armed forces); Martha A. Field, *Problems of Proof in Conscientious Objector Cases*, 120 U. PA. L. REV. 870, 933-50 (1972) (proposing changes in the nation's draft laws, particularly those with respect to conscientious objector claims); William Van Alstyne, *Congress, the President, and the Power to Declare War: A Requiem for Vietnam*, 121 U. PA. L. REV. 1, 27-28 (1972) (suggesting that the war in Vietnam became unconstitutional after the Tonkin Gulf Resolution was repealed).

<sup>14</sup> See, e.g., Seth F. Kreimer, *Technologies of Protest: Insurgent Social Movements and the First Amendment in the Era of the Internet*, 150 U. PA. L. REV. 119, 170 (exploring the role of the Internet in "facilitating the emergence of insurgent social movements"); Gary R. Ignatin, Comment, *Let the Hackers Hack: Allowing the Reverse Engineering of Copyrighted Computer Programs to Achieve Compatibility*, 140 U. PA. L. REV. 1999, 2000 (1992) (arguing for less stringent copyright protection for computer software).

<sup>15</sup> "Once every few years, the editorial board of the *University of Pennsylvania Law Review* goes on a frolic and detour. The product of such an escapade is commonly la-

ures in the legal community such as the Honorable A. Leon Higginbotham.<sup>16</sup> On occasion, the *Law Review* has published as symposium issues the papers resulting from conferences such as one on metropolitan regionalism, issued in 1957.<sup>17</sup> Part I of this Essay highlights a few representative pieces from the myriad published in the *Law Review*'s first 150 years.

The *Penn Law Review* has had an impact on a number of levels. As a key institution at Penn Law, one of the nation's premier law schools, the *Law Review* has influenced the development of the Law School's curriculum.<sup>18</sup> In addition, membership on *Law Review* has shaped the education and careers of many Penn Law students. Part II will explore a few of the personalities connected with the *Law Review* over the years.

Beyond the particular editors involved, the *Penn Law Review* has been a major influence on the development of American law, as indicated by bibliometric and analytical research, which examines citations to law review articles to assess their impact on legal scholarship and judicial decision making. These citation studies are the subject of Part III of this Essay.

## I. LAW REVIEW SCHOLARSHIP IN CONTEXT

Examining the 150 years of substantive content of the *University of Pennsylvania Law Review* reveals that some writers explored rather narrow, technical legal issues. Others engaged the pressing social and legal issues of the day, using intellectual tools extracted from within the world of legal scholarship as well as from the broader field of social science.

The history of the *University of Pennsylvania Law Review* begins with the 1852 publication of the *American Law Register* during a turbulent

---

beled an 'Aside,' the most famous of which is *The Common Law Origins of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975), and the most recent of which is *Challenging Law Review Dominance*, 149 U. PA. L. REV. 1601 (2001). *Ex Ante*, 5 GREEN BAG 2D 1, 3 (2001).

<sup>16</sup> Dedication, A. Leon Higginbotham, Jr.: *The Man*, 142 U. PA. L. REV. 511, 511 (presenting tributes by Edward R. Becker, Guido Calabresi, Anne Whatley Chain, John P. Frank, Ronald K. Noble, Louis H. Pollak, and Bernard Wolfman).

<sup>17</sup> See Symposium, *Metropolitan Regionalism: Developing Governmental Concepts*, 105 U. PA. L. REV. 439 (1957) (exploring metropolitan characteristics, identifying problems unique to cities, and suggesting how one might recognize the group values of any given metropolitan area).

<sup>18</sup> This is both the author's personal observation and is suggested generally by ideas in Swygert & Bruce, *supra* note 4, at 779.

period of American history that would see the election of Abraham Lincoln and the onset of the Civil War.<sup>19</sup> The nation was becoming ever more conscious of the tragedy of slavery in 1852, the year in which Harriet Beecher Stowe published *Uncle Tom's Cabin*.<sup>20</sup> In the years following the *Register's* debut, America experienced the destruction of the Civil War and the ensuing period of national reconstruction.<sup>21</sup> While many articles in the *American Law Register* had a narrow, technical focus, several addressed the social and political issues of the times.<sup>22</sup>

The inaugural volume of the *American Law Register* offered a format the editors retained for most of the first fifty years of publication, prior to the time that it became a publication of the Law School.<sup>23</sup> Each volume included leading articles by legal practitioners, judges, or law professors, along with summaries of recent American cases and foreign judicial decisions.<sup>24</sup> The *Register* also provided short book reviews and tributes to notable members of the legal profession. Substantive articles focused on doctrinal topics such as chancery court jurisdiction, voluntary assignments of chattel property, and the rights and liabilities of parents vis-à-vis their minor children.

Since its inception, the *University of Pennsylvania Law Review* and its predecessor publications have attempted to balance service to the legal profession with the advancement of legal scholarship. In its first

---

<sup>19</sup> ENCYCLOPEDIA OF AMERICAN HISTORY 240-57 (Richard B. Morris & Jeffrey B. Morris eds., 7th ed. 1996).

<sup>20</sup> *Id.* at 240.

<sup>21</sup> *Id.* at 257-84.

<sup>22</sup> See, e.g., *Martial Law*, 9 AM. L. REG. 498, 498 (1861) (discussing the relationship between the military and its partners in the state during periods of national crisis and, more specifically, the use of martial law); W.A. Maury, *The Late Civil War*, 23 AM. L. REG. 129, 132 (1875) (discussing generally the impact of the Civil War on jurisdiction and civil remedies and arguing that "so soon as the state of things called civil war came into existence the powers of the government of the United States were . . . suspended throughout the states seceded" and that government "wholly destitute of power or discretion in the premises had no alternative but to observe the rules of conduct prescribed by the jus gentium [international law] for the government of belligerents"); *The Power of the President to Grant a General Pardon or Amnesty for Offenses Against the United States*, 17 AM. L. REG. 513, 513-14 (1869) (discussing President Johnson's Dec. 25, 1868, proclamation granting pardon and amnesty to those whose actions during the Civil War were treasonous).

<sup>23</sup> For a general discussion of the "standardized format" of American law reviews in the late-nineteenth and early-twentieth centuries, see John Jay McKelvey, *The Law School Review: 1887-1937*, 50 HARV. L. REV. 868 (1937).

<sup>24</sup> For examples of summaries of decisions from Great Britain and France, see Recent English Cases, 1 AM. L. REG. 37 (1852); and Recent French Decisions, 1 AM. L. REG. 42 (1852).

life as the *American Law Register*, the *Law Review* was published, written, and edited by practicing lawyers for practicing lawyers. The first editors in 1852 were Asa Fish and Henry Wharton, members of the Pennsylvania Bar.<sup>25</sup> During the mid- and late-nineteenth century, the publisher of the *American Law Register* selected judges, practicing attorneys, and law faculty to serve as editors.<sup>26</sup> In 1892, two Philadelphia attorneys, George Wharton Pepper and William Draper Lewis became the sole editors.<sup>27</sup> They published the periodical under the name *American Law Register and Review*.<sup>28</sup>

In 1895, Lewis became Dean of the University of Pennsylvania Law School, at which time he succeeded in having the Law School take over the production of the publication under the direction of a board of student editors.<sup>29</sup> The 1896 Volume was the first to be published under a group of student editors.<sup>30</sup> In 1908, the name of the periodical was changed from the *American Law Register and Review* to the *University of Pennsylvania Law Review and American Law Register*.<sup>31</sup> The publication kept that name until 1945, when it was given its present name, the *University of Pennsylvania Law Review*.<sup>32</sup>

While the *Law Review* initially published articles of primary interest to legal practitioners, in time it would adopt a more academic bent. In its first half-century, the *American Law Register* addressed a number of topics typically characterized as "doctrinal." Doctrinal articles focus on legal rules in traditional areas such as contracts or torts. These articles are distinguished from articles that are more concerned with law's social, historical, political, or philosophical context.

The time during which the Law School took over publication of the *American Law Register* was an age of great technological change in America. Steam energy and electricity were introduced into the country's manufacturing industries and transportation systems; there was a great change in national transportation, marked by the expansion of the country's railroads.<sup>33</sup> There were, in addition, demographic changes brought about by a new period of immigration from

---

<sup>25</sup> Flanagan, *supra* note 3, at 69; see also Appendix B.

<sup>26</sup> Flanagan, *supra* note 3, at 69.

<sup>27</sup> *Id.*; see also Appendix B.

<sup>28</sup> Flanagan, *supra* note 3, at 69.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*; see also Appendix A.

<sup>31</sup> UNIV. OF PA. LAW SCH., THE RECORD 62 (1923).

<sup>32</sup> Flanagan, *supra* note 3, at 69.

<sup>33</sup> HOWARD ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES 247 (1980).

Europe.<sup>34</sup> It was also a time of economic instability and labor unrest. While many of the articles published by the *Law Review* at this time addressed narrow, technical legal issues, a few reflected their historical context.<sup>35</sup>

The *University of Pennsylvania Law Review* proper was established in 1896. At about the same time, several other law reviews were being founded at America's premier law schools. The *Harvard Law Review* began publication in 1887, followed by the *Yale Law Journal* in 1891.<sup>36</sup> Law reviews were initiated at the law schools at Columbia in 1901 and Michigan in 1902.<sup>37</sup>

The late-nineteenth-century experiences of the University of Pennsylvania Law School parallel the experiences of a number of the other law schools that began publishing law reviews at roughly the same time.<sup>38</sup> In the late 1890s, law reviews adopted the form we know today. The institution of the *Law Review* is intimately tied to the model of legal education based upon the study of appellate cases, called the case method, espoused by Christopher Columbus Langdell at Harvard.<sup>39</sup> "Students who excelled in the classroom wrote for the *Law Review*, where they typically applied this scientific analysis [the case method] to a recently decided case."<sup>40</sup> Thus, the tools used for achievement in the classroom setting under the case method were the same tools used in a student's work on *Law Review*.

In the early-twentieth century, the *Law Review* published eight issues per year.<sup>41</sup> In 1918, amid the worsening economic conditions in the country at the conclusion of the First World War, financial concerns led the board to reduce the number of issues to four per year.<sup>42</sup> Beginning with Volume 119, published from 1970 to 1971, the *Law*

---

<sup>34</sup> *Id.* at 259.

<sup>35</sup> See, e.g., William Draper Lewis, *Strikes and Courts of Equity*, 46 AM. L. REG. 1, 2-3 (1898) (discussing the issue of criminal contempt coupled with the use of the injunction as used against assemblies of striking workers); Richard A. McMurtle, *The Legal Rights and Duties of Employers and Employed as Affecting the Interests of the Public*, 41 AM. L. REG. 421, 426 (1938) (discussing a Pennsylvania statute that allowed for the prosecution of individuals or groups who hinder "any one who desires to labor for their employer").

<sup>36</sup> Swygert & Bruce, *supra* note 4, at 773, 779.

<sup>37</sup> *Id.* at 779.

<sup>38</sup> *Id.*

<sup>39</sup> Cane, *supra* note 2, at 216-17.

<sup>40</sup> *Id.* at 217.

<sup>41</sup> UNIV. OF PA. LAW SCH., *supra* note 31, at 62.

<sup>42</sup> *Id.*

*Review* went to six issues.<sup>43</sup>

In 1923, the *Law Review* board sought to bring about closer cooperation with “practicing attorneys and judges so that more of the latter [could] become contributors of articles, [and thus] the *Law Review* [would] be in a position to render to the legal profession a service second to that of no other law school publication.”<sup>44</sup> The *Law Review* still evidences a commitment to the practicing bar and bench and expresses the desire to reach beyond an academic audience.

During the latter part of the nineteenth century and the early part of the twentieth century, as the country faced such concerns as women’s suffrage, the First World War, and the increasing ethnic and religious diversity of the population, the authors writing in the *Law Review* addressed these issues along with other, more narrowly focused topics. In its 1892 Volume the *Register* featured an article by James T. Ringgold examining the Sunday laws in the United States.<sup>45</sup> This article was published at a time when there was a much stronger link between religion—Christianity in particular—and civil society in America.<sup>46</sup> The Sunday laws challenged the separation of church and state by prescribing the use of governmental power to close places of business and entertainment on Sunday,<sup>47</sup> the Sabbath observed by most Christians, and to prevent individuals and groups from engaging in activities that would “disturb” the Sabbath.<sup>48</sup>

Ringgold discussed the various rationales given for Sunday laws, which tend to ignore or obfuscate the fact that the statutes actually forced all citizens to observe Christian obligations.<sup>49</sup> One example of a pretextual rationale for Sunday laws was the idea that a mandatory day of rest was necessary to maintain the general health of the population.<sup>50</sup> While these statutes were considered constitutional in the early

<sup>43</sup> At the time of this change in the frequency of the publication of the *Law Review*, Bernard Wolfman became Dean of the Law School, succeeding Jefferson Fordham. Derek Davis, “A Living Science and a Present Art”: A History of the University of Pennsylvania Law School 188-89 (2000) (unpublished manuscript, on file with author).

<sup>44</sup> *Id.*

<sup>45</sup> James T. Ringgold, *Sunday Laws in the United States*, 40 AM. L. REG. 723 (1892).

<sup>46</sup> See, e.g., JONATHAN D. SARNA & DAVID G. DALIN, RELIGION AND STATE IN THE AMERICAN JEWISH EXPERIENCE 9-12 (1997) (“[A]ll of the states enacted Sunday laws of some form or other in the nineteenth century, and over the years religious leaders mounted recurrent campaigns to revitalize Sabbath observance, both by enacting new laws and by promoting enforcement of those already on the books.”).

<sup>47</sup> Ringgold, *supra* note 45, at 727.

<sup>48</sup> *Id.* at 733.

<sup>49</sup> *Id.* at 734.

<sup>50</sup> *Id.* at 734-36.



twentieth century,<sup>51</sup> clearly they raised challenges to the notion of the separation of church and state, especially since the country was becoming ever more religiously diverse.

During the second decade of the twentieth century, America's attention was drawn to American women and the right to vote. The *Law Review* published an article by William J. Marbury who argued against the "proposed woman suffrage amendment."<sup>52</sup> The author attacked the amendment on procedural grounds, arguing that the way in which the amendment was being adopted violated the proper methods that can be used to amend the Constitution. Marbury acknowledged the legitimacy of amendment of the U.S. Constitution by means of a national constitutional convention or by conventions held in each of the states.<sup>53</sup> Marbury found that the method by which the women's suffrage amendment was to be adopted, which called for ratification by three-quarters of the legislatures of the various states, was invalid procedurally.<sup>54</sup>

Arguing from a states' rights perspective, Marbury wrote that this amendment would damage "the right of a State to determine for itself who shall constitute its electorate" and that this right of the state to establish its own electorate is "essential to the existence of a State."<sup>55</sup> Thus, three-quarters of the states, by the process of constitutional amendment proposed in this instance, would "restrain at least or hamper in its exercise one of the functions essential to the very existence of a State within the meaning of the Constitution, and [was] therefore void."<sup>56</sup> Marbury concluded that should the women's suffrage amendment be approved it would not withstand a constitutional challenge in the Supreme Court.<sup>57</sup>

Volume 69 of the *Law Review*, published in 1920 and 1921, contained articles on traditional subjects, such as an article on torts by Francis H. Bohlen that explored the duties that landowners have to invitees of their premises.<sup>58</sup> At the time he wrote this article, Bohlen

---

<sup>51</sup> *Id.* at 723.

<sup>52</sup> William J. Marbury, *The Proposed Woman Suffrage Amendment and the Amending Power*, 65 U. PA. L. REV. 403, 404 (1917).

<sup>53</sup> *Id.* at 405-06.

<sup>54</sup> *Id.* at 405-07.

<sup>55</sup> *Id.* at 410 (internal quotation marks omitted).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 420.

<sup>58</sup> Francis H. Bohlen, *The Duty of a Landowner Toward Those Entering His Premises of Their Own Right*, 69 U. PA. L. REV. 237 (1921).

was Biddle Professor of Law at the Law School<sup>59</sup> and, according to William Draper Lewis, was "the outstanding authority on the Law of Torts in the United States."<sup>60</sup>

This Volume also contained articles particular to Pennsylvania. One example is Alex Simpson's article on the definition of "residence" in Pennsylvania for the purpose of voting.<sup>61</sup> Simpson was one of the founders of the Pennsylvania Bar Association and served as its president and chairman of its Committee on Law Reform for more than twenty years.<sup>62</sup> Simpson was appointed to the Pennsylvania Supreme Court in 1918.<sup>63</sup> This feature of the *Penn Law Review*, publishing a few articles each year that were Pennsylvania specific, continued during much of the twentieth century. In keeping with the *Law Review's* tradition of including international perspectives, an article included in Volume 69 looked at legal changes in Latin America.<sup>64</sup>

During the 1920s and 1930s the United States saw a major economic depression and widespread economic suffering, labor unrest, and a large number of strikes.<sup>65</sup> The American government began to look at social and economic pressures facing America and contemplated appropriate legal responses. Authors called for a more activist federal government during this time of dramatic technical and economic changes in American society. Women demanded an active role in American political life by means of the right to vote. In the 1924-1925 Volume of the *Law Review*, Margaret Center Klinglesmith authored an article dealing with the process of amending the federal constitution.<sup>66</sup> Klinglesmith was the first female law school librarian in the United States and, in 1916, received the first honorary LL.M. that the University of Pennsylvania granted to a woman.<sup>67</sup> The context for this article was the period of federal constitutional amendment the country recently had undergone, particularly concerning the post-Civil War (Thirteenth, Fourteenth, and Fifteenth) Amendments, an

---

<sup>59</sup> Davis, *supra* note 43 (manuscript at 58).

<sup>60</sup> William Draper Lewis, *Francis Herman Bohlen*, 91 U. PA. L. REV. 377, 377 (1943).

<sup>61</sup> Alex Simpson, Jr., *What Constitutes a Voting Residence in Pennsylvania?*, 69 U. PA. L. REV. 1 (1920).

<sup>62</sup> *Legends of the Philadelphia Bar*, PHILADELPHIA LAW., Winter 2002, at 56, 74.

<sup>63</sup> *Id.*

<sup>64</sup> Thomas W. Palmer, *A Study of the Mining Law of Chile*, 69 U. PA. L. REV. 48 (1920).

<sup>65</sup> ZINN, *supra* note 33, at 368-97.

<sup>66</sup> Margaret Center Klinglesmith, *Amending the Constitution of the United States*, 73 U. PA. L. REV. 355 (1925).

<sup>67</sup> Davis, *supra* note 43 (manuscript at 175).

amendment in the early twentieth century that authorized the collection of an income tax by the federal government (Sixteenth), the amendment authorizing Prohibition (Eighteenth), and the women's suffrage amendment that was proposed in July of 1919 and ratified in August of 1920 (Nineteenth).<sup>68</sup> Klinglesmith noted a perhaps too eager desire to use the process of constitutional amendment rather than the normal legislative process.<sup>69</sup> She stressed the gravity of amending the federal charter and urged caution in the use of the amendment power provided by Article V of the U.S. Constitution.<sup>70</sup>

Volume 75 of the *Law Review*, which was published in 1926 and 1927, looked at equity jurisdiction in federal courts,<sup>71</sup> British divorce law,<sup>72</sup> and the use of torture in British law.<sup>73</sup> Again, the *Law Review* emphasized traditional doctrinal issues at the same time that it examined historical and comparative legal matters.

In its Volume 85, published in 1936 and 1937, the *Law Review* published an article by Alpheus Thomas Mason, at that time a professor of politics at Princeton University, on President Franklin Roosevelt's proposal to "pack" the Supreme Court with up to fifteen additional Justices.<sup>74</sup> President Roosevelt's action must be viewed in the context of rapid economic and social change in American society. Mason underscored the doctrinal tension between the President, who through his New Deal Program attempted to found the federal administrative state, and the Supreme Court, which invalidated much of the legislation associated with that program.<sup>75</sup>

Mason noted criticisms of the Court by former chief executives, by Congress, as well as by fellow jurists.<sup>76</sup> Importantly, he also acknowledged that the Justices did not always use neutral principles of constitutional interpretation but, to a large extent, invalidated New Deal legislation on the basis of personal policy disagreements.<sup>77</sup> Yet, guided by separation of powers arguments, Mason came out in favor of an in-

<sup>68</sup> Klinglesmith, *supra* note 66, at 361-64.

<sup>69</sup> *Id.* at 365.

<sup>70</sup> *Id.* at 378-79.

<sup>71</sup> Robert von Moschzisker, *Equity Jurisdiction in the Federal Courts*, 75 U. PA. L. REV. 287 (1927).

<sup>72</sup> J.E.G. de Montmorency, *Divorce Law in England*, 75 U. PA. L. REV. 36 (1926).

<sup>73</sup> Ernest G. Black, *Torture Under English Law*, 75 U. PA. L. REV. 344 (1927).

<sup>74</sup> Alpheus Thomas Mason, *Politics and the Supreme Court: President Roosevelt's Proposal*, 85 U. PA. L. REV. 659 (1937).

<sup>75</sup> *Id.* at 677.

<sup>76</sup> *Id.* at 662-66.

<sup>77</sup> *Id.* at 664.

dependent judiciary.

Mason also reviewed earlier plans by American presidents to modify the membership of the Court to achieve the results that they wanted,<sup>78</sup> as well as Congress's tampering with the Court in order to achieve policy goals.<sup>79</sup> Mason pointed out the problems with Roosevelt's plan for the Court and offered an alternative: "a constitutional amendment authorizing Congress . . . to over-ride by a two-thirds vote the judicial invalidation of an act of Congress."<sup>80</sup> Of course, Mason's suggested legislation did not gain Congress's approval nor did the court-packing legislation championed by Roosevelt because both were distrusted by a majority of the American electorate.

Other articles published in Volume 85 included those involving doctrinal law, such as John S. Strahorn, Jr.'s article on the hearsay rule;<sup>81</sup> international and foreign law, such as Charles Cheney Hyde's article on international cooperation for neutrality;<sup>82</sup> and, once again, legal issues especially pertinent to Pennsylvania, such as Robert Brigham's piece on an aspect of Pennsylvania corporate law.<sup>83</sup> Other articles in the same Volume evidenced a concern with broad issues pressing in contemporary American society, such as E.H. Foley, Jr.'s article on state financing of low-rent housing<sup>84</sup> and Bernard Eskin's article on labor disputes.<sup>85</sup>

After World War II, America experienced a period of extreme anti-Communist sentiment that was most prominently expressed by the leading anti-Communist crusader, Senator Joseph McCarthy.<sup>86</sup> In this Cold War context, Murray L. Schwartz and James C.N. Paul published an article in Volume 107 of the *Law Review* on the federal censorship of foreign communist "propaganda" sent through the U.S. mail.<sup>87</sup> At the time that he authored this article, Schwartz, a 1949

<sup>78</sup> *Id.* at 667.

<sup>79</sup> *Id.* at 671.

<sup>80</sup> *Id.* at 676.

<sup>81</sup> John S. Strahorn, Jr., *A Reconsideration of the Hearsay Rule and Admissions*, 85 U. PA. L. REV. 564 (1937).

<sup>82</sup> Charles Cheney Hyde, *International Co-operation for Neutrality*, 85 U. PA. L. REV. 344 (1937).

<sup>83</sup> Robert Brigham, *Pennsylvania Rules Governing the Allocation of Receipts Derived by Trustees from Shares of Stock*, 85 U. PA. L. REV. 358 (1937).

<sup>84</sup> E.H. Foley, Jr., *Low-Rent Housing and State Financing*, 85 U. PA. L. REV. 239 (1937).

<sup>85</sup> Bernard Eskin, *The Legality of "Peaceful Coercion" in Labor Disputes*, 85 U. PA. L. REV. 456 (1937).

<sup>86</sup> ZINN, *supra* note 33, at 422-23, 426-28.

<sup>87</sup> Murray L. Schwartz & James C.N. Paul, *Foreign Communist Propaganda in the*

graduate of the Law School, was in private practice in Philadelphia. He later went on to become Professor of Law at UCLA.<sup>88</sup> Paul, a 1951 University of Pennsylvania Law School graduate, was on the faculty of the Law School in the late 1950s and early 1960s.<sup>89</sup>

The Schwartz and Paul article is based upon an empirical study of mail censorship; the research was carried out under the auspices of the Institute of Legal Research at the University of Pennsylvania Law School.<sup>90</sup> Mail censorship by the U.S. Postal Service grew out of the perceived need to censor Nazi and Communist propaganda during the 1940s.<sup>91</sup> Censorship of materials from then-Communist nations such as China, the Soviet Union, and Poland continued.<sup>92</sup> The justification for this later governmental action was the Korean War and mid-twentieth-century congressional hearings on "the menace of . . . Red propaganda."<sup>93</sup> These hearings included, in particular, those of the notorious House Un-American Activities Committee.<sup>94</sup> The unbridled, excessive use of censorship tools under the procedures discussed in this article deprived research libraries and research institutions of needed materials on current events and cultural affairs.<sup>95</sup> Ultimately, materials such as the *London Economist* and publications from the American Friends Service Committee (the Quakers) were confiscated, causing "considerable public criticism and embarrassment."<sup>96</sup> In their article, Schwartz and Paul looked at the questionable legal bases for these confiscations and the resulting conflict with each citizen's First Amendment right to access to this type of material.<sup>97</sup> They also offered possible legislative solutions and more acceptable restrictions.<sup>98</sup> This article exemplifies an approach to legal scholarship developed throughout the twentieth century, notably at the *Penn Law Review*, wherein doctrinal analysis is enhanced, informed, and sometimes replaced by empirical data and a social science orientation.

---

*Mails: A Report on Some Problems of Federal Censorship*, 107 U. PA. L. REV. 621 (1959).

<sup>88</sup> ASS'N OF AM. LAW SCH., THE AALS DIRECTORY OF LAW TEACHERS, 2001-2002, at 960 (2001).

<sup>89</sup> *Id.* at 846.

<sup>90</sup> Schwartz & Paul, *supra* note 87, at 621 n.\*.

<sup>91</sup> *Id.* at 624-26.

<sup>92</sup> *Id.* at 628-39.

<sup>93</sup> *Id.* at 629, 631.

<sup>94</sup> *Id.* at 632.

<sup>95</sup> *Id.* at 637-38.

<sup>96</sup> *Id.* at 647.

<sup>97</sup> *Id.* at 649-66.

<sup>98</sup> *Id.* at 658-66.

During the period following the Second World War, in addition to considering the legal issues confronting an expanding society, the *Law Review* published reflective articles examining legal education and the experience of faculty and students at Penn Law School. One example is an article published in the late 1960s authored by Herbert M. Silverberg, which looked at the beginnings of clinical legal education.<sup>99</sup>

Silverberg's article detailed the operation of the Prison Research Council of the University of Pennsylvania Law School, which provided written responses to legal questions posed by prisoners.<sup>100</sup> In his article, Silverberg questioned: (1) whether law students' research and counseling in response to prisoners' questions constitutes the 'practice of law';<sup>101</sup> (2) whether it is fair for students to represent prisoners in trial courts rather than seasoned attorneys;<sup>102</sup> and (3) whether it is preferable for law students to focus primarily on research and writing, tasks with which they have become familiar through their classroom experience, rather than representing clients in court.<sup>103</sup> Silverberg highlights the benefits to students of participating in this type of clinical legal education: students sharpen their research and writing skills as well as their knowledge of substantive criminal law, gain some of the experiences of a practicing attorney, and serve a portion of society that has little access to legal services.<sup>104</sup> For their part, prisoner-clients gained a better understanding of the functioning of the judicial system and of how they got where they were.<sup>105</sup> Also, in rare instances, the work of the law students resulted in prisoners obtaining their freedom.<sup>106</sup>

Two Volume 118 articles published at the beginning of the 1970s also focused on issues of the moment: school busing and the rights of students. Jack Greenberg, in an article that reprinted his speech from the 1970 *Law Review* banquet, looked at the social conflict in the United States "over whether this country will continue integrating its schools and its society, or halt and go backwards."<sup>107</sup> Greenberg, who

---

<sup>99</sup> Herbert M. Silverberg, *Law School Legal Aid Clinics: A Sample Plan; Their Legal Status*, 117 U. PA. L. REV. 970 (1969).

<sup>100</sup> *Id.* at 971.

<sup>101</sup> *Id.* at 985-92.

<sup>102</sup> *Id.* at 973-75.

<sup>103</sup> *Id.* at 972-73.

<sup>104</sup> *Id.* at 1000.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Jack Greenberg, *Integration or Segregation?*, 118 U. PA. L. REV. 939, 939 (1970).

was director and counsel for the NAACP Legal Defense and Educational Fund at the time,<sup>108</sup> attacked the political jargon of the day, which emphasized “social equality” rather than “educational equality”;<sup>109</sup> the extreme negative characterization of busing to achieve the goal of integration in contrast to the general public acceptance of the busing of students to achieve other goals;<sup>110</sup> and the misuse of the rhetoric of “community control.”<sup>111</sup> In his conclusion, Greenberg indicts the administration of President Richard Nixon, for while “[t]here is no clear statement of opposition to integration[,] . . . because that would be unacceptable[,] . . . [there is] deliberate confusion, slowdown on enforcement, and efforts to frighten the public.”<sup>112</sup> Greenberg ends on an optimistic note, finding the broader American public committed to educational integration and the courts and Congress to be an effective counterweight to the Nixon administration’s backpedaling.<sup>113</sup>

In the same Volume, and commenting on the same period, Stephen Goldstein analyzed the increase in “students’ ‘rights.’”<sup>114</sup> Goldstein notes swings in the Court’s deference to school administrators, finding that the early twentieth century was a period of “intense judicial scrutiny and skepticism of governmental action [which later] gave way to great judicial deference to administrative and other governmental decision-making.”<sup>115</sup> After the nation’s experiences during the 1960s, law increasingly recognized students’ rights to privacy and expression.<sup>116</sup> Goldstein attributed these changing attitudes both to the increasingly collaborative (as opposed to didactic) philosophy of secondary and post-secondary education,<sup>117</sup> and to a renewed judicial distrust of governmental action.<sup>118</sup>

---

<sup>108</sup> ASS’N OF AM. LAW SCH., *supra* note 88, at 545.

<sup>109</sup> Greenberg, *supra* note 107, at 940.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 942.

<sup>112</sup> *Id.* at 943.

<sup>113</sup> *Id.*

<sup>114</sup> Stephen R. Goldstein, *Reflections on Developing Trends in the Law of Student Rights*, 118 U. PA. L. REV. 612, 612 (1970).

<sup>115</sup> *Id.* at 613.

<sup>116</sup> *See id.* at 615-16 (noting “the adoption of . . . more permissive rules concerning student expression” and “a growing recognition that students . . . have rights of privacy that should not be unduly interfered with”).

<sup>117</sup> *See id.* at 614-15 (describing a trend away from the “prescriptive” model and towards the “analytic” model in high schools and institutions of higher education).

<sup>118</sup> *See id.* at 617 (citing cases analyzing the “state law power of school boards” and striking down “school regulations restricting hair and dress choices of students and

In Volume 118, the *Law Review* contained articles on racial discrimination and labor grievances,<sup>119</sup> juvenile law,<sup>120</sup> marches and protests,<sup>121</sup> and a California law restraining abortion.<sup>122</sup> In addition to these articles, which show the *Law Review's* concern for and involvement with the major issues of the country during the 1960s and early 1970s, the same Volume contained a tribute to a former University of Pennsylvania Law School Dean, Jefferson B. Fordham.<sup>123</sup>

Volume 125 of the *Law Review*, published in 1976 and 1977, featured an issue with a series of articles honoring William Henry Hastie. Hastie, who died in 1976, had been a Dean of Howard Law School, governor of the Virgin Islands, and a judge on the United States Court of Appeals for the Third Circuit.<sup>124</sup> In the issue's lead essay, however, Louis H. Pollack, then-Dean of the Law School and later a member of the federal judiciary, stated:

[O]vershadowing all of these accomplishments was his partnership with Charles Houston and Thurgood Marshall in the most important lawyers' endeavor since the establishment of judicial review: developing the strategy and launching the litigation that, four years after Hastie was named to the Third Circuit, led to the overthrow of *Plessy v. Ferguson*.<sup>125</sup>

This Volume of the *Law Review* also dealt with such socially relevant topics as military justice,<sup>126</sup> the statute that authorized the National School Lunch program,<sup>127</sup> and the disproportionate impact theory of racial discrimination.<sup>128</sup>

their parents").

<sup>119</sup> E.g., William B. Gould, *Labor Arbitration of Grievances Involving Racial Discrimination*, 118 U. PA. L. REV. 40 (1969).

<sup>120</sup> Comment, *Statutory Vagueness in Juvenile Law: The Supreme Court and Mattiello v. Connecticut*, 118 U. PA. L. REV. 143 (1969).

<sup>121</sup> Comment, *The Constitutionality of a Requirement to Give Notice Before Marching*, 118 U. PA. L. REV. 270 (1969).

<sup>122</sup> Jane Lang McGrew, Comment, *To Be or Not to Be: The Constitutional Question of the California Abortion Law*, 118 U. PA. L. REV. 643 (1970).

<sup>123</sup> Jefferson B. Fordham, 118 U. PA. L. REV. 665, 665-87 (1970) (comprising tributes to Dean Fordham by Chief Justice Earl Warren, Erwin N. Griswold, Paul W. Bruton, Bernard G. Segal, Louis H. Pollak, William B. Harvey, Terrance Sandalow, and Jerome J. Shestack).

<sup>124</sup> Louis H. Pollak, *William Henry Hastie*, 125 U. PA. L. REV. 1, 1 (1976).

<sup>125</sup> *Id.* at 1-2.

<sup>126</sup> Kent S. Bernard, *Structures of American Military Justice*, 125 U. PA. L. REV. 307 (1976).

<sup>127</sup> Comment, *The National School Lunch Act: Statutory Difficulties and the Need for Mandatory Gradual Expansion of State Programs*, 125 U. PA. L. REV. 415 (1976).

<sup>128</sup> Michael J. Perry, *The Disproportionate Impact Theory of Racial Discrimination*, 125 U. PA. L. REV. 540 (1976).



At the end of the twentieth century, legal scholarship underwent dramatic changes. These major shifts were signaled by changes in the material published by the *Penn Law Review*. With the emergence of new interests in legal scholarship, such as law and economics, law and literature, feminist jurisprudence, law and society, and critical legal studies, law reviews began to receive and publish a large number of interdisciplinary articles.<sup>129</sup> Rather than the earlier doctrinal articles and interests that had dominated American law reviews, interdisciplinary articles played an ever increasing role late in the century.<sup>130</sup>

For example, Volume 137, published in 1988 and 1989, touched on topics as wide-ranging as religious "shunning" and the Free Exercise Clause of the First Amendment,<sup>131</sup> Article 9 of the Uniform Commercial Code in the context of certain elements of the philosophy of Ludwig Wittgenstein,<sup>132</sup> and the "abuse excuse" when an abused child kills her parent.<sup>133</sup> This Volume also contained a symposium issue reflecting on the fiftieth anniversary of the adoption of the Federal Rules of Civil Procedure.<sup>134</sup>

In the 1990s, the *Law Review* published numerous articles dealing with sexuality and gender. In Volume 143, an article by David Cole addressed the broad issue of the social and legal construction of sexuality and examined the regulation of sexual expression in the Supreme Court's then-current jurisprudence.<sup>135</sup> Cole charged that the Court, in this area, contradicted its own traditional First Amendment free speech doctrines.<sup>136</sup> Cole underscores the relationship between

<sup>129</sup> See Posner *supra* note 8, at 1133 (noting the rise of "interdisciplinary, theoretical, [and] nondoctrinal" legal scholarship and the consequent impact on student-edited law reviews).

<sup>130</sup> See *id.* at 1133-34 (noting the end of a "Golden Age" of doctrinal legal scholarship between 1970 and 1990, and the rise of new forms of legal scholarship, particularly interdisciplinary forms).

<sup>131</sup> Justin K. Miller, Comment, *Damned if You Do, Damned if You Don't: Religious Shunning and the Free Exercise Clause*, 137 U. PA. L. REV. 271 (1988).

<sup>132</sup> Dennis M. Patterson, *Wittgenstein and the Code: A Theory of Good Faith Performance and Enforcement Under Article Nine*, 137 U. PA. L. REV. 335 (1988).

<sup>133</sup> Joelle Anne Moreno, Comment, *Killing Daddy: Developing a Self-Defense Strategy for the Abused Child*, 137 U. PA. L. REV. 1281 (1989).

<sup>134</sup> Symposium, *The 50th Anniversary of the Federal Rules of Civil Procedure, 1938-1988*, 137 U. PA. L. REV. 1873 (1989).

<sup>135</sup> David Cole, *Playing by Pornography's Rules: The Regulation of Sexual Expression*, 143 U. PA. L. REV. 111 (1994).

<sup>136</sup> See *id.* at 176-77 ("[T]he regulation of sexual expression cannot be justified under traditional speech doctrines and indeed inverts two of the First Amendment's most fundamental principles," namely "the maxim that the First Amendment's central purpose is to protect public dialogue from official censorship, and the 'bedrock principle'

public discourse on sexuality and governmental regulation of sexual expression, charging that the latter has "constructed a very particular type of sexuality, one in which transgressing lines and violating taboos is central to sexual excitement."<sup>137</sup>

In the same issue, Lani Guinier, at the time a faculty member at Penn Law, tackled the topic of gender bias in legal education. Her article evidences the growing interest of the legal profession in using empirically based social science studies to examine legal topics. In this article, entitled *Becoming Gentlemen*,<sup>138</sup> Guinier uses data from students at Penn Law, in the form of survey data, written narratives, and interview material. Based upon her survey of large numbers of students at the Law School, Guinier found that "the law school experience of women in the aggregate differ markedly from that of their male peers."<sup>139</sup> Male and female graduates who had nearly identical entry-level academic qualifications nevertheless had law school experiences that diverged along gender lines.<sup>140</sup>

The female students in Guinier's study reacted very negatively to the Socratic method of classroom instruction and participated less frequently in classroom settings.<sup>141</sup> Guinier determined that, for the female law students that she studied, "learning to think like a lawyer means learning to think and act like a man."<sup>142</sup>

Social issues and interdisciplinary concerns were also evidenced in Volume 144, published in 1995 and 1996. That Volume contained articles dealing with the legal issues surrounding group homes for recovering substance abusers,<sup>143</sup> religious freedom in the workplace,<sup>144</sup> and First and Second Amendment issues occasioned by the rise of pri-

---

that society may not censor expression merely because it finds it offensive, morally or otherwise.").

<sup>137</sup> Cole, *supra* note 135, at 177.

<sup>138</sup> Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994).

<sup>139</sup> *Id.* at 2.

<sup>140</sup> *See id.* at 3-4 ("Despite identical entry-level credentials, this performance differential between men and women is created in the first year of law school and maintained over the next three years.").

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 5.

<sup>143</sup> Laurie C. Malkin, Comment, *Troubles at the Doorstep: The Fair Housing Amendments Act of 1988 and Group Homes for Recovering Substance Abusers*, 144 U. PA. L. REV. 757 (1995).

<sup>144</sup> Sidney A. Rosenzweig, Comment, *Restoring Religious Freedom to the Workplace: Title VII, RFRA and Religious Accommodation*, 144 U. PA. L. REV. 2513 (1996).

vate militias.<sup>145</sup> This Volume also published an issue dedicated to a law and economics symposium entitled "Law, Economics, and Norms."<sup>146</sup> From the very narrow and doctrinal focus of the *American Law Register*, the *University of Pennsylvania Law Review* has evolved into a home for legal scholarship in the most expansive sense of that term.

## II. BIBLIOMETRIC STUDIES

After looking selectively at a sampling of the vast amount of legal scholarship published in the *Law Review* and its predecessor publications during the past 150 years, I next examine the impact that the *University of Pennsylvania Law Review* has had in the legal community. This can be determined, to a certain degree, by bibliometric studies, which look at citation counts to indicate the influence of articles that were published in the *Law Review* on subsequent legal scholarship and judicial opinions.

In the 2000 edition of the *Journal Citation Reports* published by the Institute for Scientific Information, we see one indicator of the *Law Review's* standing. The *University of Pennsylvania Law Review* was in the top ten law reviews nationally in terms of total number of scholarly citations received in the year 2000 in published law reviews.<sup>147</sup> The *Law Review* ranked sixth, publishing thirty-eight articles in that year and receiving 1759 citations.<sup>148</sup> Other "top ten" law reviews include the *Harvard Law Review*, the *Yale Law Journal*, the *Columbia Law Review*, the *Stanford Law Review*, the *University of Chicago Law Review*, the *Michigan Law Review*, the *Virginia Law Review*, and the *California Law Review*.<sup>149</sup>

Fred Shapiro's 1996 study of the most cited law review articles of "all time" lists the *University of Pennsylvania Law Review* as publishing four of the most cited articles.<sup>150</sup> Other law reviews in this same range

<sup>145</sup> Joelle E. Polesky, Comment, *The Rise of Private Militia: A First and Second Amendment Analysis of the Right to Organize and Right to Train*, 144 U. PA. L. REV. 1593 (1996).

<sup>146</sup> Symposium, *Law, Economics, & Norms*, 144 U. PA. L. REV. 1643 (1996).

<sup>147</sup> INST. FOR SCIENTIFIC INFO., JOURNAL CITATION REPORTS, at <http://jcrweb.com> (2001).

<sup>148</sup> *Id.* Importantly, this citation count excludes citations made to the *American Law Register*.

<sup>149</sup> *Id.*

<sup>150</sup> Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751, 767-71 (1996) [hereinafter Shapiro, *Most-Cited Revisited*]; see also Fred R. Shapiro, *The Most-Cited Law Review Articles*, 73 CAL. L. REV. 1540, 1549 (1985). Shapiro's four articles from the *Law Review* were: Henry J. Friendly, "Some Kind of Hearing", 123 U. PA. L. REV. 1267 (1975) (#55 on the list); Marvin E. Frankel, *The Search for Truth: An*

of prominence include the law reviews from Harvard, Yale, Columbia, and Stanford, as well as the *Journal of Legal Studies* (published by the University of Chicago Press).<sup>151</sup> While citation-counting studies need to be viewed in context and with some caution, the work of the Institute for Scientific Information and Professor Shapiro demonstrate the preeminence of the *University of Pennsylvania Law Review* in the world of legal scholarship.

The impact of the *Law Review* is also shown by the fact that judges rely on articles from the *Law Review* as persuasive authority. In the McClintock study, the *University of Pennsylvania Law Review* was ranked sixth with a total of 732 citations by the Supreme Court, circuit courts of appeals, district courts, and state supreme courts for the time periods sampled.<sup>152</sup> Isolating the citation patterns in U.S. Supreme Court opinions, the *University of Pennsylvania Law Review* ranked fourth, with 47 citations.<sup>153</sup> In the citation studies of both academic legal scholarship and of judicial opinions, the *University of Pennsylvania Law Review* is one of the most influential legal publications in the nation and reflects as well as contributes to the prominence of the Law School.

The empirical evaluations detailed above, then, demonstrate that the *University of Pennsylvania Law Review* has published articles that have positively influenced the development of legal scholarship as well as the administration of justice. The prominence of the *Law Review* in both the academic and judicial fields reflects positively on the institution of the *University of Pennsylvania Law Review*.

### III. PERSONALITIES

Turning from the impact of the *Law Review* in the worlds of scholarship and applied law, this Essay next looks briefly on some of the personalities who have served as student editors of the *University of Pennsylvania Law Review*. In the mid-1960s, the *Law Review's* articu-

---

*Umpireal View*, 123 U. PA. L. REV. 1031 (1975) (#76); Arthur Allen Leff, *Unconscionability and the Code—The Emperor's New Clause*, 115 U. PA. L. REV. 485 (1967) (#86); Harold Leventhal, *Environmental Decisionmaking and the Role of the Courts*, 122 U. PA. L. REV. 509 (1974) (#96). Shapiro, *Most-Cited Revisited*, *supra*, at 767-71.

<sup>151</sup> Shapiro, *Most-Cited Revisited*, *supra* note 150, at 763.

<sup>152</sup> Michael D. McClintock, *The Declining Use of Legal Scholarship by Courts: An Empirical Study*, 51 OKLA. L. REV. 659, 689 (1998).

<sup>153</sup> *Id.* at 691. In addition, the *University of Pennsylvania Law Review* was ranked fifth for total citations by the federal courts with 429 citations, fifth for total citations by U.S. courts of appeals with 234 citations, fourth for total citations by U.S. district courts with 148 citations, and tenth for total citations by state supreme courts with 303 citations. *Id.* at 690-94.

lated self-image was that of an organization similar to that of a large law firm:

*The Law Review* is basically structured like a large law firm. There are senior partners (the Board of Officers), junior partners (the Board of Editors), and associates (the second year students). Every member is impressed from the moment he enters the 'firm' that *The Review* demands excellence in analysis, research, and expression. Other students can struggle through a legal method paper or appellate advocacy brief and breathe a sigh of relief at its conclusion; when *The Law Review* member finishes one assignment he is simply given another. . . .

The work is demanding and not always exciting, but so is the legal profession. By undergoing this experience, *The Law Review* member can get a glimpse of what to expect in later years and a measure of his own dedication to the profession he has chosen for his life's work . . . . In any event . . . when he leaves law school his experience will have made him more of a legal craftsman than the other members of his class.<sup>154</sup>

Serving on *Law Review* has an important influence on the careers of most student editors. Accomplishing the publication of a large and well respected legal publication with a demanding schedule enhances their legal education and sharpens their legal research and writing skills. In addition, the professional and social contacts that these students make last for a lifetime.

The benefit of service to the *University of Pennsylvania Law Review* can be seen in the careers of a few of those who served, starting with William Draper Lewis. Lewis, who received his LL.B. from the Law School in 1891, was editor of the *American Law Register* from 1892 to 1896 and went on to become Dean of the Law School.<sup>155</sup>

The board of editors for Volume 75 of the *Law Review* included Philip Werner Amram as editor-in-chief and Sadie M. Alexander as an associate editor.<sup>156</sup> Amram was the first Jewish editor-in-chief.<sup>157</sup> He later joined the Law School faculty along with his father, David Werner Amram, and was an editor of the well known Pennsylvania practice publication, *Goodrich-Amram Pennsylvania Procedural Rules*.<sup>158</sup> Sadie M. Alexander, who received an LL.B. in 1927, was the University of Pennsylvania Law School's first black woman graduate.<sup>159</sup> She also "earned her Ph.D. in economics from Penn—the first black woman in

---

<sup>154</sup> UNIV. OF PA. LAW SCH., THE 1964 REPORT 82-83 (1964).

<sup>155</sup> Davis, *supra* note 43 (manuscript at 177).

<sup>156</sup> Board of Editors, 75 U. PA. L. REV. 247 (1927).

<sup>157</sup> Davis, *supra* note 43 (manuscript at 162).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* (manuscript at 198).

the country to earn a Ph.D. in any subject.”<sup>160</sup>

In mid-century, Arlin M. Adams served as editor-in-chief for Volume 94, published in 1945 and 1946.<sup>161</sup> Adams served as Pennsylvania secretary of public welfare from 1963 to 1969 and as a judge of the United States Court of Appeals for the Third Circuit from 1969 to 1987.<sup>162</sup> He has taught as a lecturer at the Law School, and his legal research focuses on religion and the First Amendment.<sup>163</sup>

Curtis R. Reitz, currently the Algernon Sidney Biddle Professor at Penn Law School, was editor-in-chief for Volume 104;<sup>164</sup> Dolores Korman Sloviter was one of the notes editors for the same Volume.<sup>165</sup> Sloviter was one of eight women in a class of 132.<sup>166</sup> She was the first woman appointed to the Third Circuit Court of Appeals and served as Chief Judge from 1991 to 1998.<sup>167</sup> “Of her almost 700 published opinions, among the most significant was a 1996 decision declaring the portion of the Communications Decency Act restricting certain communications over computer networks to be in violation of the First Amendment, a decision affirmed by the U.S. Supreme Court.”<sup>168</sup> Another colleague of Reitz and Sloviter on this Volume of the *Law Review* was Peter Liacouras.<sup>169</sup> Liacouras later became Dean of Temple University School of Law from 1972 to 1982 and then President of Temple University from 1982 to 2000.<sup>170</sup> These are just a few select examples of the career paths of *Penn Law Review* editors. Appendix A of this Essay provides a complete list of the editors-in-chief of the *Law Review* over the past 100 years. Appendix B lists the editors of the *American Law Register* from 1852 to 1895.

## CONCLUSION

Born out of the late-nineteenth-century reform of legal education to become an icon of legal scholarship at the University of Pennsylva-

---

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* (manuscript at 190).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* (manuscript at 186); Board of Editors, 104 U. PA. L. REV. 954 (1945-1946).

<sup>165</sup> Board of Editors, 104 U. PA. L. REV. 954 (1955-1956).

<sup>166</sup> Davis, *supra* note 43 (manuscript at 204).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* (referring to *ACLU v. Reno*, 929 F. Supp. 824 (1996), *aff'd*, 521 U.S. 844 (1997)).

<sup>169</sup> Board of Editors, 104 U. PA. L. REV. 507 (1955-1956).

<sup>170</sup> Davis, *supra* note 43 (manuscript at 196).

nia Law School and in the worlds of legal scholarship and legal practice, today the *Law Review* looks forward to the future. The *Law Review* has led many trends in legal scholarship over the past century and a half, from legal realism to critical legal studies and the law and economics movement. The *Law Review* has offered itself as a forum for legal scholars to advance and to test new ideas in the broader legal community. The discourse contained in the *Law Review* has had a strong impact on legal scholarship and judicial decision making, as indicated by the patterns of citations. Student editors of the *Law Review* have graduated from the University of Pennsylvania Law School to take up major academic, law firm, judicial, and governmental positions. Today, along with a financially sound and well-respected paper legal publication, the *University of Pennsylvania Law Review* boasts an elegant presence on the Internet.<sup>171</sup> The *Law Review* looks back proudly over 150 years of preeminence as a major legal publication and anticipates its next sesquicentury.

---

<sup>171</sup> University of Pennsylvania Law Review, at <http://www.law.upenn.edu/journals/lrev> (last visited May 12, 2002).

APPENDIX A: STUDENT EDITORS-IN-CHIEF OF THE  
*AMERICAN LAW REGISTER AND THE UNIVERSITY*  
*OF PENNSYLVANIA LAW REVIEW, 1896-2002*

Volume 44	1896	Thomas James Meagher, Walter Cazenove Douglas, Jr.
Volume 45	1897	Walter Cazenove Douglas, Jr., Roy Wilson White
Volume 46	1898	Roy Wilson White, Arthur E. Weil
Volume 47	1899	Arthur E. Weil, Thomas Cahall, Paul V. Connolly
Volume 48	1900	Paul V. Connolly, E. Wilbur Kriebel
Volume 49	1901	E. Wilbur Kriebel, Theodore J. Grayson
Volume 50	1902	Thornton M. Pratt
Volume 51	1903	John Glass Kaufman
Volume 52	1904	Edgar Howard Boles
Volume 53	1905	Francis H. Shields
Volume 54	1906	Otto Wolff, Jr.
Volume 55	1907	T. Walter Gilkyson
Volume 56	1908	Paul Freeman
Volume 57	1908-1909	Russell S. Wolfe
Volume 58	1909-1910	Shippen Lewis
Volume 59	1910-1911	Shippen Lewis, Ralph J. Baker
Volume 60	1911-1912	Ralph J. Baker, William A. Schnader
Volume 61	1912-1913	Samuel Rosenbaum
Volume 62	1913-1914	Douglass D. Storey
Volume 63	1914-1915	Edward W. Madeira
Volume 64	1915-1916	Lemuel Braddock Schofield
Volume 65	1916-1917	Raymond K. Denworth
Volume 66	1917-1918	Thomas K. Finletter, Henry H. Houck (acting editor-in-chief)
Volume 67	1918-1919	David Werner Amram
Volume 68	1919-1920	Thomas K. Finletter
Volume 69	1920-1921	Francis H. Bohlen, Jr.
Volume 70	1921-1922	A. Carson Simpson
Volume 71	1922-1923	Cadmus Z. Gordon, Jr.
Volume 72	1923-1924	Philip Wallis



Volume 107	1958-1959	David R. Tomb, Jr.
Volume 108	1959-1960	Anthony G. Amsterdam
Volume 109	1960-1961	Bruce B. Wilson
Volume 110	1961-1962	David W. Miller, James D. Crawford
Volume 111	1962-1963	David H. Marion
Volume 112	1963-1964	Dennis M. Flannery
Volume 113	1964-1965	Stephen M. Goodman
Volume 114	1965-1966	James Eiseman, Jr.
Volume 115	1966-1967	Timothy N. Black
Volume 116	1967-1968	Peter S. Greenberg
Volume 117	1968-1969	Loftus E. Becker, Jr.
Volume 118	1969-1970	I. Michael Greenberger
Volume 119	1970-1971	William F. Sheehan, III
Volume 120	1971-1972	Jordan Luke
Volume 121	1972-1973	John H. Mason
Volume 122	1973-1974	Jonathan Z. Cannon
Volume 123	1974-1975	M. Duncan Grant
Volume 124	1975-1976	Nancy J. Bregstein
Volume 125	1976-1977	Gary L. Sasso
Volume 126	1977-1978	Alfred W. Putnam, Jr.
Volume 127	1978-1979	Pamela Daley Kendrick
Volume 128	1979-1980	Kit Kinports
Volume 129	1980-1981	Marcie R. Horowitz
Volume 130	1981-1982	Dale Louise Moore
Volume 131	1982-1983	Natalie Wexler
Volume 132	1983-1984	Sean P. Wajert
Volume 133	1984-1985	R. Charles Miller
Volume 134	1985-1986	Michael P. Doss
Volume 135	1986-1987	Vernon L. Francis
Volume 136	1987-1988	Marci A. Hamilton
Volume 137	1988-1989	William Bennett Petersen
Volume 138	1989-1990	Peter Nicholas Flocos
Volume 139	1990-1991	Alexander C. Gavis
Volume 140	1991-1992	William Scott Biel
Volume 141	1992-1993	M. Mazen Anbari
Volume 142	1993-1994	Megan L. Jacobson
Volume 143	1994-1995	Edward J. Normand
Volume 144	1995-1996	Katherine A. Kelly
Volume 145	1996-1997	Peter D. Blumberg

Volume 73	1924-1925	Harris C. Arnold
Volume 74	1925-1926	W. James MacIntosh
Volume 75	1926-1927	Philip Werner Amram
Volume 76	1927-1928	David H. Frantz
Volume 77	1928-1929	Robert Brigham
Volume 78	1929-1930	Carroll R. Wetzel
Volume 79	1930-1931	Knox Henderson
Volume 80	1931-1932	John C. Bruton, Jr.
Volume 81	1932-1933	W. Wilson White
Volume 82	1933-1934	Howard S. McMorris
Volume 83	1934-1935	Harry E. Sprogell
Volume 84	1935-1936	Bernard V. Lentz
Volume 85	1936-1937	Victor J. Roberts
Volume 86	1937-1938	James A. Sutton
Volume 87	1938-1939	Thomas P. Glassmoyer
Volume 88	1939-1940	Theodore O. Rogers
Volume 89	1940-1941	Lipman Redman
Volume 90	1941-1942	Joseph W. Swain, Jr.
Volume 91	1942-1943	William B. Johnson, Robert M. Landis, Bart E. Ferst
Volume 92	1943-1944	Bart E. Ferst, Frederick G. Kempin, Jr.
Volume 93	1944-1945	John R. Miller
Volume 94	1945-1946	John R. Miller, Arlin M. Adams
Volume 95	1946-1947	Arlin M. Adams, Raymond J. Bradley, Leon Ehrlich
Volume 96	1947-1948	Raymond J. Bradley, John F. Zeller, III, Noyes E. Leech
Volume 97	1948-1949	William D. Valente, Robert W. Valimont
Volume 98	1949-1950	Charles C. Hileman, III
Volume 99	1950-1951	James C.N. Paul
Volume 100	1951-1952	Joseph P. Flanagan, Jr.
Volume 101	1952-1953	Ellis H. McKay
Volume 102	1953-1954	Bruce L. Castor
Volume 103	1954-1955	Joseph V. Reaph, Jr.
Volume 104	1955-1956	Curtis R. Reitz
Volume 105	1956-1957	Ronald P. Wertheim
Volume 106	1957-1958	John G. Harkins, Jr.

Volume 146	1997-1998	Clifford Ruprecht
Volume 147	1998-1999	John J. Butts
Volume 148	1999-2000	Daniel R. Garodnick
Volume 149	2000-2001	Kedric L. Payne
Volume 150	2001-2002	Michael A. Mugmon
Volume 151	2002-2003	Dena Greenspan

APPENDIX B: EDITORS OF THE *AMERICAN LAW REGISTER*, 1852-1895<sup>172</sup>

Volumes 1-9	1852-1860	Asa I. Fish, Henry Wharton
Volume 10	1861	Hon. Isaac F. Redfield, Prof. Theodore W. Dwight, Prof. Amos Dean, Henry Wharton
Volume 11	1862	Hon. Isaac F. Redfield, Prof. Theodore W. Dwight, Prof. Amos Dean, Henry Wharton, James T. Mitchell
Volumes 12-13	1863-1864	Hon. Isaac F. Redfield, Prof. Theodore W. Dwight, Prof. Amos Dean, Hon. J.F. Dillon, John A. Jameson, James T. Mitchell
Volumes 14-17	1865-1869	James T. Mitchell, Hon. Isaac F. Redfield, Prof. Theodore W. Dwight, Prof. Amos Dean, Hon. J.F. Dillon, John A. Jameson, Alex Martin
Volume 18	1870	James T. Mitchell, Hon. Isaac F. Redfield, Hon. Edmund H. Bennett, Prof. Theodore W. Dwight, Hon. J.F. Dillon, Alex Martin
Volume 19	1871	James T. Mitchell, Hon. Isaac F. Redfield, Hon. Edmund H. Bennett, Prof. Theodore W. Dwight, Hon. J.F. Dillon, Hon. John A. Jameson, Alex Martin
Volume 20	1872	James T. Mitchell, Hon. Isaac F. Redfield, Hon. Edmund H. Bennett, Prof. Theodore W. Dwight, Hon. J.F. Dillon, Alex Martin

---

<sup>172</sup> Starting in 1896, the *American Law Register* was edited by student editors. Prior to that time attorneys, judges, or law professors edited the publication. Thomas James Meagher, who edited Volume 44 was the first individual designated "Editor-in-Chief." The list of editors from 1852 to 1895 includes all editors, while from 1896 to 2002 only the names of the editors-in-chief are provided.

Volumes 21-22	1873-1874	Hon. James T. Mitchell, Hon. Isaac F. Redfield, Hon. Edmund H. Bennett, Prof. Theodore W. Dwight, Hon. J.F. Dillon, Hon. John A. Jameson, Alex Martin, Henry G. Atwater
Volumes 23-24	1875-1876	Hon. James T. Mitchell, Hon. Isaac F. Redfield, Hon. Edmund H. Bennett, Prof. Theodore W. Dwight, Hon. J.F. Dillon, Hon. Charles H. Wood, Alex Martin, Henry G. Atwater
Volumes 25-26	1877-1878	Hon. James T. Mitchell, Hon. Edmund H. Bennett, Prof. Theodore W. Dwight, Hon. J.F. Dillon, Hon. T.M. Cooley, Hon. Charles H. Wood, A. Sydney Biddle
Volumes 27-28	1879-1880	Hon. James T. Mitchell, Hon. Edmund H. Bennett, Hon. J.F. Dillon, Hon. T.M. Cooley, Hon. Charles H. Wood
Volume 29	1881	Hon. James T. Mitchell, Hon. Edmund H. Bennett, Hon. T.M. Cooley, Hon. Charles H. Wood
Volumes 30-34	1882-1886	Hon. James T. Mitchell, Hon. Edmund H. Bennett, Hon. Eli S. Hammond, Hon. T.M. Cooley, Hon. Charles H. Wood, Frank P. Prichard
Volume 35	1887	Frank P. Prichard, Hon. Edmund H. Bennett, Hon. Eli S. Hammond, Prof. H. Wade Rogers, Henry Budd, Hon. T.M. Cooley, Hon. Chas. H. Wood, Hon. Marshall S. Ewell
Volume 36	1888	Hon. T.M. Cooley, Hon. E.S. Hammond, Hon. E.H. Bennett, Hon. Chas. H. Wood, Prof. H. Wade Rogers, Prof. M.D. Ewell, Henry Budd, J.C. Sellers, John B. Uhle
Volume 37	1889	Hon. T.M. Cooley, James C. Sellers,

		John B. Uhle
Volume 38	1890 <sup>173</sup>	John Bethell Uhle
Volumes 40-41	1892-1893	George Wharton Pepper, William Draper Lewis
Volumes 42-43	1894-1895	George Wharton Pepper, William Draper Lewis, William Struthers Ellis

---

<sup>173</sup> Volume 39, the 1891 volume of the *American Law Register*, does not include a list of editors. A note in that Volume indicates that the commercial publisher of the *American Law Register*, D.B. Canfield Company, experienced financial difficulties, and, as a result, the periodical ceased publication, and the copyright and subscribers list was turned over to the University of Pennsylvania Press. Publisher's Note, 39 AM. L. REG. 448 (1891).